



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Admin.
National Ocean Service
Office of Response and Restoration
c/o EPA Office of Site Remediation and Restoration (HIO)
1 Congress Street
Boston, MA 02114
25 July 2000

Ms. Janet Coit
Office of Senator Lincoln D. Chafee
10 Dorrance Street
Providence, RI

Dear Ms. Coit:

Thank-you for spending the time talking to me during the briefing of Senator Chafee at the Naval Education and Training Center, Newport, Rhode Island on 24 July 2000. I enjoyed conversing with the senator and his staff. Senator Chafee and his father have long been stewards of the environment; it was an honor meeting him.

NOAA has assisted the Federal EPA, the State of Rhode Island DEM, and the Navy in technical and scientific site matters since NETC's listing on the National Priorities List in 1990. As outlined in the National Contingency Plan, NOAA is a Federal Natural Resource Trustee and works on behalf of the public to protect and restore marine and estuarine natural resources. Details concerning this responsibility are provided in the handouts I gave you on Monday.

As you are aware, the goal of CERCLA is to protect human health and to safeguard the natural environment from releases (or potential releases) of hazardous substances. Hence, CERCLA aims to abate an existing problem and the lead Federal agency manages the clean-up. The trustees have the responsibility to compensate the public for the natural resources lost over the time they were injured. Such compensation, through natural resource restoration, may be provided through a formal natural resource damage (NRD) claim (i.e., a lawsuit) or a negotiated settlement as described under Section 122(j) of CERCLA.

Of particular recent concern to NOAA is the potential lost opportunity to restore the estuarine environment resulting from natural resource injuries at the McAllister Point Landfill site. Although the Navy will remove the contamination causing the injuries and restore the dredged area as required by the Clean Water Act, they have not committed to compensating the public for the lost use of the natural resources resulting from years of site-related contamination. The Navy appears inflexible in funding the rapid restoration of the estuarine environment because they have unwisely separated remediation (i.e., site ??

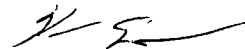
clean-up) from restoration despite the obvious close linkage of the two efforts to make the environment "whole." Enclosed is a letter from Jim Shafer (NETC Remedial Project Manager) to Paul Kulpa (State of RI Remedial Project Manager) stating that "a specific project cannot be funded to compensate for past natural resource damages" (i.e., injuries). Rather, the Navy requires that the natural resource trustees (principally the State of RI) complete a natural resource damage assessment (NRDA) if such injuries are to be compensated for.

NOAA rejects the Navy's position. Section 122(j)(2) of CERCLA allows the natural resource trustees, at appropriate sites, to grant a Covenant Not to Sue (i.e., a release) to the responsible party(s) "if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore natural resources damaged by such release or threatened release of hazardous substances." Hence, the trustees do not need to complete a NRDA; rather, a negotiated settlement between the trustees and the Navy could result in a restoration project(s) that compensates the public as part of the remedy settlement.

NRDA claims largely focus on injured or lost biological and physical natural resources, including lost uses associated with those injured or lost resources. Although NRD monies are legally destined for restoration, such studies, economic evaluations, and settlement negotiations often move along slowly resulting in a lengthy time for implementation of a restoration plan. In addition, the manpower requirements for preparation of negotiations are drains from the trustees limited manpower and fiscal reserves. Rather than moving through a long, arduous, and often adversarial NRD process, the covenant not to sue option quickens settlement and provides restoration to the affected habitat and compensation to the public.

NOAA, with the support of the State of Rhode Island DEM and the citizen Restoration Advisory Board, would appreciate the help from the Senator and/or his staff to have the Navy consider a comprehensive settlement that includes both the planned remediation and the necessary restoration that they are presently avoiding. NOAA believes the Navy can show flexibility in their funding constraints and not trade this necessary restoration for future remedial activities at other NETC sites. Such a settlement can provide closure to the past environmental harm from McAllister Point Landfill activities. Please contact me if you have any questions.

Sincerely,



Kenneth Finkelstein, Ph.D.

cc: Paul Kulpa (RIDEM)
Barbara Barrow (RAB)
Kymberlee Keckler (EPA)
James Shafer (NDIV/NAVY)



DEPARTMENT OF THE NAVY

NORTHERN DIVISION

NAVAL FACILITIES ENGINEERING COMMAND

10 INDUSTRIAL HIGHWAY

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IN REPLY REFER TO

Code 09TC/JS

18 JUL 2000

Mr. Paul Kulpa
Remedial Project Manager
Rhode Island Department of Environmental Management
Office of Waste Management
265 Promenade Street
Providence, Rhode Island

Dear Mr. Kulpa:

SUBJECT: NATURAL RESOURCE DAMAGE ASSESSMENT AT MCALLISTER POINT LANDFILL
NAVAL STATION NEWPORT, NEWPORT, RHODE ISLAND

The Navy has received your letter of June 12, 2000 and has concerns with statements on past agreements regarding a Natural Resource Damage Assessment. The letter indicates that during remedial activities associated with the capping of the McAllister Point Landfill, the State of Rhode Island, the United States Department of Interior and other trustee representatives elected to enter into a negotiated settlement rather than pursue a Natural resource Damage Assessment Claim against the Navy. The letter also states that a preliminary damage assessment was calculated and it was decided that a restoration project would be selected at a later date.

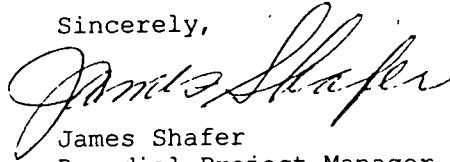
The Navy has not been informed of any past settlement reached by the State of Rhode Island and other trustees regarding a Natural resource Damage Assessment Claim against the Navy. The Navy has also not been party to any discussions regarding opportunities for compensation as your letter alleges. It has been our understanding that the State of Rhode Island is undecided whether to pursue a Natural resource Damage Assessment Claim for McAllister Point Landfill.

The Navy has discussed Natural Resource Injury (NRI) responsibilities with the State of Rhode Island and other trustees during remedial activities associated with the McAllister Point Landfill. In accordance with DOD policy, the Navy conducted comprehensive ecological risk assessments as part of the Remedial Investigations/Feasibility study, which examined NRI. After consultation with the USEPA, the State of Rhode Island and other trustees, the Navy proposed a remedy for McAllister Point Landfill offshore area that would result in the least amount of residual NRI once the response action is completed. The Navy, USEPA and State of Rhode Island also agreed to promote natural habitat restoration in the McAllister Point Landfill-Marine Sediment/Management of Migration Record of Decision March 2000. The Habitat Survey Restoration Report will be submitted this October as part of the Remedial Design Work Plan for the selected remedy.

The Navy has explained to the USEPA, State of Rhode Island, other trustees and the Naval Station Newport Restoration Advisory Board that the use of Defense Environmental Restorations Funds are **not** authorized to pay for Natural Resource Damage Assessments (NRDA). It has also been explained that a specific project cannot be funded to compensate for past natural resource damages. During recent Restoration Advisory Board meetings the State of Rhode Island has indicated that they had not decided whether to pursue a NRDA claim for the McAllister Point Landfill. The Navy explained that NRDA claims are outside the scope of the Installation Restoration Program.

The Navy enjoys working together with the USEPA, State of Rhode Island, trustees and community members in developing environmental restorations plans for the Naval Station Newport Rhode Island. We look forward to our continued progress at McAllister Point Landfill and the remaining sites under the Installation Restoration Program. If you have any questions concerning this matter or any other issues, please contact James Shafer at (610) 595-0567, ext. 241.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Shafer".

James Shafer
Remedial Project Manager
By direction of the
Commanding Officer

Copy to:

M. Griffin, NSN
D. Egan, TAG
K. Keckler, EPA
Stephen Morin, Associate Director, DEM
Warren S. Angell, DEM
Ken Anderson, RICRMC
Ken Finkelstein, NOAA
Kenneth Carr, USFW
Barrow, RAB
R. Jones, NEREC
C. Mayer, NDIV